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Petitioners,
v.
INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,
Respondents.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,
v.
STATE OF HAWAI'I, ET AL.,
Respondents.

On Writs Of Certiorari To The United States Courts Of Appeals For The Fourth And Ninth Circuits

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BRIEF OF *AMICI CURIAE* COLLEGES AND UNIVERSITIES IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici are colleges and universities that submit this brief in support of Respondents. Though *amici* are located in the U.S., their missions and reach are global: they educate, employ, conduct research, and collaborate with students, faculty, and scholars from all over the world—individuals who speak different languages, practice different religions, and have wide-ranging life experiences. These individuals make significant contributions to their fields of study and to campus life by bringing their unique perspectives and talents to *amici*'s classrooms, laboratories, and performance spaces. They also contribute by making scientific discoveries, starting businesses, and creating literature and art, all of which redound to the benefit of others far beyond *amici*'s campuses. So too, by studying and engaging with other scholars in the U.S., these individuals gain a greater understanding of and appreciation for the values we hold dear, including democratic principles and respect for the rule of law, tolerance, and human rights—values which they may then share with citizens of their home countries.

Recognizing the invaluable contributions of international students, faculty, and scholars, *amici* make significant efforts to attract the most talented individuals from around the globe. In light of their educational missions, *amici* are deeply interested in

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[1] No counsel for a party authored this brief in whole or in part, and no person, other than *amici* or their counsel, made any monetary contribution intended to fund this brief. Petitioners have filed a blanket letter of consent. Consent from Respondents has been lodged with the Clerk.

ensuring that individuals from around the globe can continue to enter the U.S. and share their unique skills and perspectives.

Boston University educates students "to be reflective, resourceful individuals ready to live, adapt and lead in an interconnected world." The University remains dedicated to the principle "that research, scholarship, artistic creation and professional practice should be conducted in the service of the wider community—local and international," and this principle endures in the University's insistence on the value of diversity. Boston University has more than 33,000 undergraduate and graduate students from more than 130 countries. In 2016, Boston University welcomed to its campus over 9,000 international students and 1,300 international scholars who hailed from 88 countries, and enrolled more than 2,500 students in the University's 90-plus study abroad programs offered in more than 25 countries on six continents.

Brandeis University affirms its unwavering commitment to creating and sustaining an educational and work environment that celebrates diversity, equity, and inclusion. We recognize the vital importance of preparing students to enter the workforce and the larger society with the knowledge, skills, and disposition needed to effectively engage with social differences. The diversity of our faculty, staff, and students is an essential ingredient in meeting these goals.

Brown University has undertaken, as its mission, service to "the community, the nation, and the world by discovering, communicating, and preserving knowledge and understanding in a spirit of free inquiry, and by

educating and preparing students to discharge the offices of life with usefulness and reputation." Brown further states that its "strength is derived from the talent and dedication of its faculty, students, and staff, working in concert with local and global partners."

Bucknell University knows that providing an excellent undergraduate education to all students requires a firm and demonstrated commitment to diversity and inclusiveness. Since admitting its first international student in 1858—19 year old Maung Shaw Loo of Burma (now Myanmar)—Bucknell has benefited from and greatly valued the unique insights and experiences that its international students, faculty, and staff bring to campus. Bucknell is committed to continuing to encourage these individuals to join its community and fulfilling its mission to foster an environment in which students develop intellectual maturity, personal conviction, and strength of character, informed by a deep understanding of different cultures and diverse perspectives.

Carnegie Mellon University ("CMU") seeks to "build on leadership in world-class education and research outside the borders of a traditional university campus; focus on continued international engagement, and deeper and broader incorporation of the full CMU experience around the world."

Case Western Reserve University considers diversity and inclusion core institutional values. The University believes that the presence of people with a broad range of backgrounds and perspectives enhances the experiences of everyone on campus—and specifically improves the quality of education and research. The

University's last two strategic plans both have emphasized the "promotion of an inclusive culture of global citizenship" as essential to our mission of discovering new knowledge and deepening understanding. Since 2007 the proportion of undergraduates from outside the U.S. has quadrupled, climbing to 12% in the fall of 2016. Meanwhile, international students totaled a quarter of graduate and professional school enrollment last year. The University also has more than 250 research and educational partnerships with institutions around the world. In an increasingly global world, we have a societal obligation to help ensure that our faculty and students can engage effectively with individuals from cultures and countries around the world. We have made enormous progress, and we are committed to doing much more to fulfill that responsibility.

Columbia University "seeks to attract a diverse and international faculty and student body, to support research and teaching on global issues, and to create academic relationships with many countries and regions. It expects all areas of the university to advance knowledge and learning at the highest level and to convey the products of its efforts to the world."

Cornell University has made strong and committed statements of support for our international students, faculty, and staff who contribute enormously to the university and have been adversely affected by the recent Executive Orders on Immigration. Cornell's Interim President, Hunter Rawlings. sent the following message to the Cornell community on January 29: "President Donald Trump's recent executive order

imposing a 90-day ban on immigrant and nonimmigrant entry to the United States from seven predominantly Muslim nations is deeply troubling and has serious and chilling implications for a number of our students and scholars. It is fundamentally antithetical to Cornell University's principles." That position has been reiterated by our new President, Martha Pollack.

Dartmouth College counts among its core values "embrac[ing] diversity with the knowledge that it significantly enhances the quality of a Dartmouth education," as well as "foster[ing] lasting bonds among faculty, staff, and students, which encourage a culture of integrity, self-reliance, and collegiality and instill a sense of responsibility for each other and for the broader world."

Duke University "promotes acquisition of knowledge in the service of society through an expansive view of global citizenship, which embraces freedom of inquiry, innovation without boundaries, and strength through diversity. . . . Duke is committed . . . to find solutions to global challenges and the education of leaders to understand and address those challenges." Duke further states that "[s]ince talent pools are now transnational, a university must draw the most powerful and creative minds from around the world to stay at the forefront of discovery."

Emory University's "mission is to create, preserve, teach, and apply knowledge in the service of humanity," and Emory "welcomes a diversity of ethnic, cultural, socioeconomic, religious, national, and international backgrounds, believing that the intellectual and social

energy that results from such diversity is critical to advancing knowledge."

The George Washington University ("GW"), located in the nation's capital, relies on faculty and students from around the world to promote diverse points of view in the classroom and in research endeavors. These international faculty and students account for or contribute significantly to scientific breakthroughs and nurture the intellectual curiosity of their American counterparts. More than 4,000 international students are currently enrolled at GW, constituting approximately 15 percent of the student body.

Georgetown University is the oldest Catholic and Jesuit institution of higher learning in the United States. Guided by its Catholic and Jesuit identity, Georgetown University is deeply committed to inter-religious dialogue and providing an environment in which members of all faiths and backgrounds are welcomed. Since its founding, Georgetown University has been a global community, engaged in training future generations of global citizens to lead and make a difference in the world, and is made stronger by religious, cultural and international diversity.

Founded in 1636, **Harvard University** was formally chartered in 1650 for "the advancement of all good literature, arts, and sciences." Finding that such advancement is best accomplished by persons of all nations, for persons of all nations, Harvard presently enrolls more than 4,900 international students and hosts nearly 5,000 more international scholars at its Cambridge and Boston campuses. These figures reflect

a "robust commitment to internationalism" that University President Drew Faust has described as "integral to all we do, in the laboratory, in the classroom, in the conference hall, in the world."

Johns Hopkins University's mission is "[t]o educate its students and cultivate their capacity for lifelong learning, to foster independent and original research, and to bring the benefits of discovery to the world."

Massachusetts Institute of Technology ("MIT") gains tremendous strength by attracting and nurturing talent from around the world. More than 40% of MIT's faculty, 40% of MIT's graduate students, and 10% of MIT's undergraduates are international. As MIT's President recently explained, MIT's faculty, students, scholars, and staff from 134 nations are what help ensure that MIT is a place of "rigor, ingenuity and real-world problem-solving where generations of bright young minds have come from every corner of the Earth to make something of themselves and work together to make a better world."

Middlebury College's commitment to global education and language learning is evident throughout our 37 international sites, graduate programs in international studies, and diverse faculty, staff and student body at all of our locations. Middlebury is devoted to building a world with a robust and inclusive public sphere, where ethical citizens work across intellectual, geographical, and cultural borders. The diversity of our faculty, staff, and students contributes in myriad ways to our "pursuit of knowledge unconstrained by national or disciplinary boundaries" as

we prepare Middlebury students to address the world's most challenging problems.

Northeastern University remains committed to fostering a diverse, inclusive, and a truly global network of students and scholars. Even as we await the Court's final resolution of the ban's constitutionality, Northeastern will not waver from its core values and will continue to support affected members of our community. Northeastern remains deeply concerned by the travel ban's negative impact on the ability of students and scholars to collaborate across borders. Further, we remain concerned that the chilling effect of the Order—and the possibility it may be expanded or made permanent—will curtail the nation's ability to attract the world's best and brightest people.

Northwestern University is committed to the unencumbered pursuit of excellence and knowledge through exceptional teaching, innovative research, and the personal and intellectual growth of its students in a diverse academic community that reflects the world to which we are inextricably connected.

Princeton University, established in 1746, "advances learning through scholarship, research, and teaching of unsurpassed quality, with an emphasis on undergraduate and doctoral education that is distinctive among the world's great universities, and with a pervasive commitment to serve the nation and the world."

Rice University "aspires to pathbreaking research, unsurpassed teaching, and contributions to the betterment of our world," seeking to fulfill this mission

"by cultivating a diverse community of learning and discovery that produces leaders across the spectrum of human endeavor." The University believes that "diversity of all types . . . enriches the learning environment at Rice and improves the quality of a Rice education for all students."

Stanford University "welcomes and embraces students and scholars from around the world who contribute immeasurably to our mission of education and discovery."

Tufts University has a reputation for shaping active citizens who give back to the global community of which we are all a part. With people from over 115 countries, the reach of Tufts' active citizenry literally spans the globe. Tufts maintains its fundamental commitment to its international students, faculty, and staff because they are as much a part of our community, as we are of theirs.

The University of Chicago states that "[d]iversity for the University is . . . particularly germane to our core perspective. We must ensure that our scholarly community is composed of a rich mix of individuals who, through their own distinctive viewpoints, contribute to the intellectually challenging culture of the University."

The University of Michigan states that "our ability to attract the best students and faculty from around the globe enhances our teaching, learning, research and societal impact and is in part responsible for our standing as a great public research university."

The University of Pennsylvania states that its "roots are in Philadelphia, the birthplace of American democracy. But Penn's reach spans the globe. . . . Penn

research and teaching encourage lifelong learning relevant to a changing global society. Effecting potent positive impact in our neighborhoods, nation, and world are the bricks on which democracy and global citizenship are built, and are the cornerstones of a Penn education."

The University of Southern California ("USC") is, and has always been, a global university. As the university that traditionally hosts the largest number of international students among all universities, these scholars add great value to our richly diverse campus community. We support efforts to ensure all of our scholars, regardless of their national origin or religious affiliation, can continue to study, research, and teach at our university.

Vanderbilt University's mission is to serve as a center for scholarly research, informed and creative teaching, and community outreach nationally and abroad. In pursuit of this mission, Vanderbilt values inclusive excellence: intellectual freedom and advancement that facilitates open inquiry, honest dialogue, compassion, and cross-cultural sensitivity. Inclusive excellence is essential to Vanderbilt's vision of training "global citizens," and requires the support of its faculty, staff, students, and alumni, as well as an appreciation of their diverse backgrounds and experiences. At Vanderbilt, cultivating a culture of global citizenship is advanced through attracting and retaining the best students, scholars, and faculty from across the globe to engage in programs and advocacy geared toward ensuring a climate of justice, access, equity, and opportunity for all students and society at large.

At Washington University in St. Louis, we value a long tradition of drawing talented people from all around the world to our community. These students and scholars integrate global perspectives into classroom conversations, informal university gatherings, and the greater St. Louis community. We believe that we all draw strength through our differences, and this diversity is vital to the creation of knowledge, problem solving, and productivity.

Worcester Polytechnic Institute ("WPI") is a globally-engaged premier research institution founded in 1865 to create and convey to the next generation the latest science and engineering knowledge in ways that are most beneficial to society in the United States and around the globe. At present, WPI has 32 graduate and undergraduate students from the current six affected countries (29 from Iran, 2 from Syria, and 1 from Libya), and dozens of students from those countries apply for admission each year. In 2017, applications from the six affected countries were down by 18% from 2016, before the travel ban was announced. Over time, WPI expects the travel ban's restrictions will have a further chilling effect on its ability to attract and retain the finest students and faculty from around the world to further its academic mission.

Yale University is committed to improving the world today and for future generations through outstanding research and scholarship, education, preservation, and practice. Yale educates aspiring leaders worldwide who serve all sectors of society through the free exchange of ideas in an ethical, interdependent, and diverse community of faculty, staff,

students, and alumni. Yale's reach is local and international, engaging with people and institutions in the U.S. and across the globe in the quest to promote cultural understanding, improve the human condition, and delve more deeply into the unknown. Yale is more than an institution of higher education; it is a community where people of diverse cultures and nationalities live, study, and work, connected by their similarities and enriched by their differences.

SUMMARY OF ARGUMENT

American colleges and universities have long recognized the importance of attracting international students, faculty, staff, and scholars. International scholars and faculty share important insights about conditions, traditions, and cultural values and practices in their home nations. Their work leads to critical advancements across all disciplines, from science and technology to arts and letters, often through cross-border collaborations that enhance their teaching and research. International students study here and return home as leaders in business, medicine, politics, and other fields. The benefits of international diversity in American higher education thus inure not only to colleges and universities themselves, but to the country and indeed the world as a whole.

The Executive Order issued on March 6, 2017, Protecting the Nation From Foreign Terrorist Entry Into the United States, Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017), (hereinafter, "EO" or "Order") impairs *amici*'s ability to attract talented individuals from around the globe and so to meet their goals of educating tomorrow's leaders. The Order

suspends for 90 days the entry into the U.S. of nationals of six Muslim-majority countries—Iran, Libya, Somalia, Sudan, Syria, and Yemen. EO § 2(c). Although the Order excludes certain visa-holders, it bars entry of nationals from the six affected countries who seek the categories of visas most commonly relied upon by *amici*'s international students, faculty, staff, and scholars. *Id.* §§ 2(c), 3(a) & (b). Despite the extensive individualized vetting a person must undergo to secure such visas, the Order would bar persons from the six affected countries from prospectively obtaining them, based solely on their nations of origin.

The Order directly threatens *amici*'s ability to attract persons not only from the six specified countries, but from around the world. The Order contradicts the values that American colleges and universities have traditionally touted as benefits of studying and working here, including the freedom of religion and equality embodied in the First and Fourteenth Amendments. Indeed, universities in other countries have used the Order to recruit international students, faculty, and scholars away from U.S. institutions. And large groups of scholars have threatened to boycott meetings and conferences hosted in the U.S. because of it.

Amici have already felt some of the Order's damaging effects. The Order was issued around the same time *amici* were sending admissions offers to prospective international students. Against the possibility that they might not obtain visas before the start of the fall semester, many of these admitted students may have chosen to pursue their education in other countries, rather than in the U.S. If permitted to

stand, the Order will discourage many prospective international students from even applying to *amici*, or any other American university, during future application cycles. Similarly, international scholars and faculty advised many *amici* that they could not accept invitations and offers to work and teach here given the uncertainty surrounding the Order. Even worse, *amici* are harmed by the Order without any evidence that an appreciable number of nationals from these six countries—all of whom the government already vets before permitting them to study or work here—pose any threat to the safety or security of the U.S. or *amici*'s campuses. Upholding the Order will send the message that any country's citizens may be unjustly targeted for exclusion and the Order's negative effects will only worsen.

The harms of the Order to *amici* are not cured by limiting its scope to "foreign nationals who lack any bona fide relationship with a person or entity in the United States." *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087, 2088–89 (2017) (per curiam). This line has not resolved the uncertainty the Order injected into *amici*'s engagement with international students, faculty, and scholars, who are left to wonder at what point their relationship with *amici* becomes "bona fide." May prospective students enter the country to visit a campus before applying for admission? May a prospective faculty member visit the U.S. to give a job talk? May a scholar enter the country to attend but not speak at a conference? To accept an uncompensated academic appointment? Given these sorts of unresolved questions, the Order, even as partially stayed, has a

pronounced chilling effect on persons who would apply to, or be recruited or invited by, *amici* in the future.

Because the Order both threatens American higher education and offends important, defining principles of our country, *amici* respectfully submit this brief in support of Respondents.

ARGUMENT

I. International Students, Faculty, and Scholars Are Vital to *Amici*, the U.S., and the World.

Amici's ability to foster rich educational environments depends in part on their ability to attract students, faculty, and scholars from around the globe. The international members of *amici*'s communities contribute to the vibrant campus life, world-class educational offerings, and research discoveries for which *amici* are known. These individuals' contributions redound to the benefit of all members of *amici*'s campus communities, the U.S., and the world.

A. Each *Amicus* Is Home to a Significant Percentage of Students, Faculty, and Scholars Who Are Citizens of Other Nations.

Amici are firmly committed to attracting the most exceptional individuals from all nations. In the 2015–16 academic year, U.S. universities welcomed more than one million international students.[2] *Amici*'s campuses

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[2] Sara Custer, *Open Doors: U.S. Surpasses 1 Million International Students*, The Pie News (Nov. 14, 2016), https://thepienews.com/news/open-doors-us-surpasses-1-million-international-students/; Molly Land & Kathryn Libal, *Trump is Undermining Higher Education as a Global Enterprise*, The

reflect this trend. Each is home to a significant percentage of international students, faculty, and scholars—including many nationals of the six countries affected by the Order. This international presence is true across *amici*'s campuses even though *amici* vary in size, location, and focus.

For example, in fall 2016, Columbia University enrolled 1,416 international undergraduates (16% of Columbia's undergraduate population) and 7,571 international graduate and professional students (38.7% of its graduate/professional students). USC had 10,571 international students—24.1% of its student body—enrolled in fall 2016. At Duke, in fall 2016, 27% of the student population was international, including 13% of the undergraduate students, and 38% of the graduate students. The University of Pennsylvania's numbers are similar: 4,859 international students were enrolled in fall 2016, including 13% of the incoming freshmen and more than 25% of graduate students. As of October 2016, Stanford enrolled 4,164 international students, comprising 24% of the student population. In fall 2016, 6,764 international students were enrolled at the University of Michigan, comprising 15% of its student population.

Amici also benefit from the contributions of international faculty and scholars. More than 40% of MIT's faculty is international. At Princeton, approximately 30% of faculty appointees, 50% of

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Chronicle of Higher Education (Jan. 31, 2017), http://www.chronicle.com/article/Trump-Is-Undermining-Higher/239060.

academic professionals (professional researchers, specialists, librarians, and postdoctoral fellows), and 50% of visiting faculty and researchers are international (including lawful permanent residents). The University of Chicago counts as international (including lawful permanent residents) 24% of its faculty and other academic appointees, as well as 63% of its postdoctoral researchers and 10% of its staff members. At Cornell, 5.1% of faculty are international, as are 26.4% of other academic employees and postdocs. Yale's faculty is 10% international, as is approximately 65% of its postdoctoral research community. In fall 2016, Northwestern was home to 1,534 international scholars, in positions ranging from postdoctoral scholars to researchers and faculty. Thirty-four percent of Emory's 944 full-time research staff are nonresident aliens.

Amici's international students, faculty, and scholars include persons from the six countries affected by the Order. USC had 168 students from Iran alone enrolled in fall 2016. Princeton has more than 50 students and employees from the six affected countries, and its graduate school received approximately 150 applications for fall 2017 (and more than 700 applications in the past five years) from students from those nations. Over the past three years, Rice has hosted between 32 and 35 students from the six affected countries and received more than 600 applications from undergraduate and graduate students from those countries. Brown has more than 20 students and scholars from the countries affected by the Order. Penn has three undergraduate students, 32 graduate and professional students, and at least two students admitted for fall 2017 from the

countries covered by the Order. The University of Chicago has 22 students from Iran, as well as two students from Sudan, two students from Syria and two recent graduates from Iran who are employed under Optional Practical Training (OPT) and University sponsorship.[3] In the past academic year, Northwestern welcomed 45 students and 22 scholars from Iran, as well as two students from Syria, one from Sudan, and one from Yemen, and extended offers of admission for the current academic year to at least 16 prospective students affected by the Order. Carnegie Mellon has 31 students and 10 faculty and scholars from the six affected countries at its U.S. locations. WPI has 32 undergraduate and graduate students and 29 faculty and scholars from the affected countries. Harvard counts 45 students and 63 scholars from the six affected countries who are present on nonimmigrant visas, along with 77 dependents from those countries, and has admitted 23 students from those countries for fall 2017. MIT currently has 58 degree and non-degree students, 53 scholars, and 6 recent graduates on OPT from the six affected countries. Emory hosts 40 faculty members and

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[3] "Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 student's major area of study." U.S. Customs & Immigration Enforcement, *Optional Practical Training (OPT) for F-1 Students* (last updated Feb. 1, 2017), https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/optional-practical-training. Although most students can apply for 12 months of OPT employment authorization before or after completing their academic studies, certain students with degrees in science, technology, engineering, and math fields may apply for a 24-month extension of post-completion OPT. *Id.*

scholars from those countries. Twenty-one of Boston University's faculty and scholars are from three of the six countries. Tufts hosts 18 faculty and scholars from the affected countries. These are just a few of the universities where persons from the affected countries make invaluable contributions to *amici*'s communities.

The international presence at *amici*'s campuses is no accident. *Amici* have invested significant time and resources to attract international students, faculty, and scholars. For example, *amici* have established many programs and centers focused on specific subjects like archaeology and the ancient world, including the Joukowsky Institute for Archaeology and the Ancient World at Brown and the University of Chicago's Oriental Institute for the study of ancient Near Eastern civilizations; schools dedicated to international relations like the School of International and Public Affairs at Columbia; residential communities focusing on cross-cultural collaboration like the Global Village at Dartmouth; and centers that serve as the focal point for international students, faculty, and scholars, like the Davis International Center and Mamdouha S. Bobst Center for Peace and Justice at Princeton, the Bechtel International Center at Stanford, the McDonnell International Scholars Academy at Washington University, and the World Fellows Program, Jackson Institute for Global Affairs, and MacMillan Center for International and Area Studies at Yale. Other programs focus on educating foreign ministers, including those from the six countries affected by the Order. For example, Harvard Kennedy School and T.H. Chan School of Public Health offer an annual Harvard

Ministerial Leadership Program, in which ten to twelve serving education, health, and finance ministers are invited to a rigorous summer course in Cambridge for leadership enhancement.

The success of these centers, programs, and offerings—and the success of *amici* in more generally attracting persons from around the world—depends on U.S. immigration policies. Many international students, faculty, and scholars are present on J-1 visas. This longstanding program is administered by the State Department to "foster[] global understanding through educational and cultural exchanges."[4] Indeed, the State Department's website expressly instructs J-1 visa recipients to "return to their home country…to share their exchange experiences."[5] As discussed below, many do—and the U.S. and the world benefit from their return, including advances in medicine and science, progress toward equal treatment of women and religious minorities, and respect for democracy and the rule of law.

The U.S. offers other types of visas to international students, faculty, and scholars as well. Many students

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[4] Bureau of Educ. & Cultural Affairs, U.S. Dep't of State, J-1 Visa Exchange Visitor Program, Common Questions–Basics, https://j1visa.state.gov/basics/common-questions/ (last visited Sept. 15, 2017).

[5] *Id.* The importance of the J-1 Visa Program is underscored by the existence of J-2 visas, which permit "spouses and dependents . . . of J-1 exchange visitors [to] accompany or later join the J-1 holder in the United States." Bureau of Educ. & Cultural Affairs, U.S. Dep't of State, J-1 Visa Exchange Visitor Program, About the J-2 Visa, https://j1visa.state.gov/basics/j2-visa/ (last visited Sept. 15, 2017).

attending full-time degree programs rely on F-1 visas, which allow them to remain in the U.S. for as long as it takes to complete their courses of study. And some university faculty, research scholars, and staff hold H-1B visas, which allow U.S. employers to fill gaps in the existing labor force with highly-skilled, temporary workers from other countries. Many researchers are employed through H-1B visas, most notably for positions in technology and the sciences.[6] Some universities also use the O-1 visa program, which enables professors or researchers with extraordinary demonstrated ability in the arts, sciences, education, business, or athletics to enter the U.S. temporarily to work in their specified field.[7]

Amici's ability to accomplish their educational missions necessarily depends on clear, consistent, predictable, and nondiscriminatory application of American immigration policies. The many international students, faculty, and scholars who make *amici*'s campuses their homes and workplaces are thoroughly

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[6] *See, e.g.*, American Immigration Council, *Fact Sheet: The H-1B Visa Program: A Primer on the Program and Its Impact on Jobs, Wages, and the Economy* (Apr. 1, 2016), https://www.americanimmigrationcouncil.org/research/h1b-visa-program-fact-sheet (reporting that "the presence of research universities accounts for H-1B demand" in many metro areas, and that "[n]early two-thirds of requests for H-1B workers are for STEM occupations. There is also high demand for workers in healthcare, business, finance, and life sciences industries.").

[7] Bureau of Consular Affairs, U.S. Dep't of State, U.S. Visas: Temporary Worker Visas, https://travel.state.gov/content/visas/en/employment/temporary.html (last visited Sept. 15, 2017).

vetted through existing visa programs.[8] *Amici* must be able to assure international students, faculty, and scholars that once they have been cleared through standard vetting procedures, they may enter the U.S. to pursue their studies and scholarship.

B. International Students, Faculty, and Scholars Contribute Significantly to *Amici*'s Campuses.

International students, faculty, and scholars make substantial contributions to *amici*'s campuses. International diversity facilitates regular interactions between individuals from different cultures with varied life experiences: a Muslim student from Iran brings something different to the seminar table than a Jewish professor from the Midwestern U.S. or a Christian graduate student from Western Europe. When individuals from different backgrounds with distinctive life experiences live and study together on the same campus, the resulting diversity promotes the free exchange of ideas, encouraging individuals to consider issues from a multiplicity of perspectives and providing a greater understanding of our global, pluralistic society.

This Court acknowledged these benefits when it held that universities have a compelling interest in obtaining the "educational benefits that flow from student body diversity." *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411, 2419 (2013) (quoting *Grutter v. Bollinger*, 539 U.S.

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[8] Joint Decl. of Madeline Albright, Avril Haines, Michael Hayden, John Kerry, John McLaughlin, Lisa Monaco, Michael Morell, Janet Napolitano, Leon Panetta, and Susan Rice ¶ 6, *Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017), ECF No. 28-2 (hereinafter "Government Officials Declaration").

306, 330 (2003)). "The academic mission of a university is a special concern of the First Amendment," and "[p]art of the business of a university [is] to provide that atmosphere which is most conducive to speculation, experiment, and creation." *Id.* at 2418 (internal quotation marks omitted; second bracket in original). The Court wrote that a diverse student body contributes to this atmosphere by fostering "enhanced classroom dialogue" and "lessening . . . isolation and stereotypes." *Id.* Accordingly, this Court has recognized that to "fulfill[] [their] mission[s]," universities must be able to recruit students (and, by extension, faculty and scholars) who will "contribute the most to the robust exchange of ideas." *Grutter v. Bollinger*, 539 U.S. 306, 324 (2003) (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978)).

International diversity is uniquely valuable. For many of *amici*'s students, enrollment in the university will be their first exposure to students, faculty, and scholars from other nations or other religious backgrounds. Such exposure both in and outside of the classroom enriches students' experiences and teaches them how to collaborate across ethnic and religious differences. Moreover, international students, faculty, and scholars provide particular insight into the world's current problems and potential solutions. A Syrian student who has lived through the country's ongoing civil war necessarily will have an important perspective on the causes of that conflict and on how the rest of the world might help alleviate it. These opportunities for cross-cultural understanding are integral to *amici*'s

ability to provide some of the best educational programs in the world.

International students, faculty, and scholars also contribute to *amici*'s campuses through their academic interests and achievements. For example, many study, teach, and research in fields that are underpopulated by American-born students, faculty, and scholars, such as the sciences, technology, engineering, and mathematics ("STEM"). By one account, more than one third of international students during the 2015–16 year studied engineering, math, or computer science, and "many" of the 14% who participated in F-1 OPT worked in STEM fields.[9] Continuing to permit international students and faculty to study and work at *amici* universities is particularly important given the pressing need for scholarship and research in these fields.

C. The Enrollment and Employment of International Students, Faculty, and Scholars Benefit the U.S. and the World.

International students, faculty, and scholars make significant scientific, technological, social, and political contributions to the U.S. and the world, above and beyond the benefits to *amici*'s campus communities.

To begin, international students make significant contributions to the U.S. economy. One estimate provides that international students directly contributed $32.8 billion to the U.S. economy and supported or contributed to the creation of 400,000

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[9] Sara Custer, *Open Doors*, *supra*.

American jobs in the 2015–16 academic year;[10] others suggest that international students "inject hundreds of billions into the U.S. economy" and "support[] well over a million U.S. jobs."[11]

In addition, many international students choose to remain in the U.S. and become leading innovators, entrepreneurs, artists, and thought-leaders. One study found that more than one third of U.S. innovators were born outside the country, and another ten percent have at least one foreign-born parent.[12] Another analysis found that "[i]mmigrants have started more than one half (44 of 87) of America's startup companies valued at $1 billion or more and are key members of management or product development teams in over 70 percent (62 of 87) of these companies."[13]

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[10] NAFSA, NAFSA International Student Economic Value Tool, http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/ (last visited Sept. 15, 2017).

[11] Government Officials Declaration ¶ 5(g) ("The Order will affect many foreign travelers, particularly students, who annually inject hundreds of billions into the U.S. economy, supporting well over a million U.S. jobs.").

[12] *See, e.g.*, Adams Nager, et al., Information Technology & Innovation Found., *The Demographics of Innovation in the United States* (Feb. 24, 2016), https://itif.org/publications/2016/02/24/demographics-innovation-united-states.

[13] Stuart Anderson, Nat'l Found. for American Policy, *Immigrants and Billion Dollar Startups* (Mar. 2016), http://nfap.com/wp-content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March-2016.pdf.

The benefits from international students, faculty, and scholars at American universities are not just economic. These individuals make significant discoveries and contributions in their fields. Since 2000, forty percent of all American Nobel prize winners in Chemistry, Medicine, and Physics have been immigrants—and in 2016, *all six* American winners of the Nobel Prize in economics and scientific fields were foreign-born.[14] These awards "represent great individual achievement but also reflect the state of research, openness and scientific advancement within [American] society."[15]

Amici have seen these successes up close. In 2014, the late Maryam Mirzakhani was the first woman to win the Fields Medal, known as the "Nobel Prize of Mathematics." Mirzakhani grew up in Iran before earning her Ph.D. at Harvard and becoming a professor at Princeton and then at Stanford.[16] Professor Muawia Barazangi came to the U.S. from Syria for graduate study after earning his undergraduate degree from the University of Damascus; he earned a Ph.D. from Columbia before joining the faculty at Cornell, where he became a U.S. citizen and had a long and distinguished

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[14] Stuart Anderson, *Immigrants Flooding America with Nobel Prizes*, Forbes (Oct. 16, 2016, 10:48 AM), http://www.forbes.com/sites/stuartanderson/2016/10/16/immigrants-flooding-america-with-nobel-prizes/#3de213817f5f.

[15] *Id.*

[16] *See* Katie Rose Quandt, *Meet the First Woman to Win the "Nobel Prize of Mathematics,"* Mother Jones (Aug. 14, 2014), http://m.motherjones.com/mixed-media/2014/08/maryam-mirzakhani-first-woman-fields-medal-mathematics.

research and teaching career in the field of Earth Sciences. Syrian-born Dina Katabi, a professor at MIT, came to the U.S. for graduate study at MIT, and has since won a Macarthur "Genius" grant for her work on improving wireless network efficiency and security.[17]

Education and employment at leading American universities also provide opportunities for individuals to experience life in the U.S. and gain a greater appreciation for American social, political, and cultural norms and ideas. These include democratic governance, respect for the rule of law and human rights, and tolerance of cultural, religious, and other differences. These individuals return to their home countries with a deeper understanding of and appreciation for the U.S. and its values—and, hopefully, a greater desire to engage in continuing discourse and exchange. They also return to their home countries with the tools necessary to improve conditions on the ground, such as through public health initiatives and good governance. This, in turn, promotes the economies of developing nations, and may stymie radicalization.[18]

International students, faculty, and scholars become leaders in their home countries. Yale counts among its

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[17] Larry Hardesty, *Signal Intelligence*, MIT Tech. Rev. (Oct. 20, 2015), https://www.technologyreview.com/s/542131/signal-intelligence/.

[18] *See, e.g.*, Omer Taspinar, *The Problem With Radicalism*, 19 Cairo Rev. 76, 80 (2015) (noting that "[a]n agenda based on human development with equal emphasis on education reform, democratic reforms, and socioeconomic advancement can address the ideological as well as economic root causes of radicalization.").

distinguished alumni many foreign leaders, including Valdis Zatlers, former President of Latvia; Abd al-Karim al-Iryani, former Prime Minister of the Republic of Yemen; and Ernesto Zedillo, former President of Mexico. Alumni from MIT include Benjamin Netanyahu, Prime Minister of Israel; Kofi Annan, former Secretary-General of the United Nations; and Lucas Papademos, former Prime Minister of Greece. Pedro Kuczynski, President of Peru, attended Princeton. World leaders educated at Harvard include current Liberian President Ellen Johnson-Sirleaf (Africa's first elected female President) and former Prime Minister of Pakistan Benazir Bhutto. And Georgetown counts among its alumni many foreign leaders, including Abdullah II bin al-Hussein, the King of Jordan; José Manuel Barroso, former President of the European Commission; Saad Hariri, former Prime Minister of Lebanon; and Nasser Judeh, former Deputy Prime Minister and Minister of Foreign Affairs of Jordan.

II. Even as Partially Stayed by This Court, the Order Harms Students, Faculty, Scholars, and Universities.

The Order has serious and chilling implications for *amici*'s students, faculty, and scholars. It separates current students from their families, impairs the ability of American universities to draw the finest international talent, and inhibits the free exchange of ideas. It is imperative to *amici* that the Court consider these and other detrimental effects of the Order.

First, the Order hurts American universities by prohibiting or deterring international students, faculty,

and scholars from studying here. *Amici*, like other American universities, aim to attract the brightest, most talented students, faculty, and scholars from around the globe. The Order hampers *amici*'s ability to do so by arbitrarily excluding persons from six majority-Muslim countries and contemplating further categorical entry bans based on national origin. The exclusion of those persons diminishes the experience of studying at *amici* universities for everyone, and inevitably will deter persons from countries other than the six identified in the Order from choosing to study or work here.

Reducing the international presence on *amici*'s campuses will detract from the academic experience for those who do study in this country. As we have explained, the benefits of international diversity to American universities are manifold. And it is not merely the classroom experience that will suffer. The success of American laboratories, a major driver of our economy, depends on their ability to attract the best trainees and postdoctoral fellows wherever they may be found, and also on their ability to collaborate with foreign scientists in areas of science that have no defense or security implications. The Order diminishes *amici*'s ability to attract these scientists, who will otherwise go to foreign laboratories.

Indeed, international universities have noted this effect and issued statements criticizing the Order and its predecessor and touting their own opportunities for international students and scholars.[19] Regarding the

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[19] Chris Parr, *Response: international universities speak out against Trump ban*, The Times Higher Education (Jan. 31, 2017),

first iteration of the travel ban, the Vice-Chancellor of the University of Cambridge, UK stated: "While we acknowledge that a country must have the right to manage its own borders, this ban is fundamentally at odds with the values of openness, tolerance and evidence-based decision-making that the University of Cambridge stands for."[20] He added: "We are determined to champion openness, and the free exchange of knowledge across borders. Even as governments around the world seek to curb freedom of movement, the University of Cambridge remains committed to welcoming the best and brightest students and staff—irrespective of their nationality."[21]

Contrary to the Government's suggestion, *see* Gov't Br. 34, the effects of the Order on prospective international students is not speculative. Some *amici* are already experiencing these negative effects. Many admissions letters for fall 2017 were sent in spring of this year, just after the Order was issued. Prospective international students had a short window to decide whether to attend a U.S. college or university. Faced with the prospect that they might not be able to obtain visas before the fall semester begins, many of these students reasonably have chosen to enroll in universities in other countries, rather than pursue their education here. Many *amici* received calls from concerned

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https://www.timeshighereducation.com/blog/response-international-universities-speak-out-against-trump-ban.

[20] *Id.*

[21] *Id.*

prospective and admitted students who questioned whether they could enroll in light of this uncertainty.

These very real difficulties extend to faculty and scholars. Yale's MacMillan Center Council on Middle East Studies and its Program on Iranian Studies are currently conducting searches for post-doctoral fellows and visiting scholars, with the most promising candidates being Iranian nationals who are currently abroad. The uncertainty of securing visas will affect acceptances of offers. The University of Pennsylvania has similar concerns, with three faculty recruits whose opportunities may be eliminated by the Order. Princeton and MIT, too, have received numerous inquiries from academic departments about how to handle the questions and concerns of faculty and scholar recruits and invited visitors who have expressed hesitation about coming to the U.S. in light of the Order.

Second, the Order harms the current members of *amici*'s campuses from the six affected countries. Even if this Order does not prematurely cancel their visas, it still separates members of *amici*'s communities from their family members living abroad. For instance, the spouses and children of scholars and researchers may be unable to enter the U.S. even for a short-term visit, creating a traumatic separation as a result of a person's decision to study and work here. Furthermore, given the arguments made to justify the Order, students, faculty, and scholars from countries affected by the Order are now wary of leaving the U.S., because they worry that their re-entry may be barred or challenged by immigration authorities. Many students from the affected countries have remained in the U.S. this past

summer, in fear that leaving to work, study abroad, or visit their families would risk indefinite exclusion or detention upon their return. These individuals are deterred from conducting field research, attending academic conferences, or participating in international meetings in foreign nations; for some, travel concerns will cause them to set aside projects that simply cannot be completed without international travel. The Order also takes a personal toll because they may feel compelled to cancel any plans to visit family and friends abroad: fly home to attend the wedding or funeral of a family member, and one risks the loss of one's visa, separation from family and friends here in the U.S., and the loss of a job, an academic degree, and years of hard work and research.

Third, the Order's chilling effects extend beyond persons from the six targeted countries. Given the review of other countries directed by the Order, EO § 2(e), and the possibility that other countries will be added to the Order's scope, *all* international students, faculty, and scholars may reasonably fear that their immigration status may be revoked at any time for reasons having nothing to do with their conduct and based on no evidence whatsoever that they pose any security risk to this country. And should a new country find itself the target of a subsequent Order, the chaos resulting from the first Order would repeat itself, reinforcing feelings of doubt and insecurity about this nation.

Fourth, the Order will impede successful academic collaboration. American universities host thousands of conferences and symposia each year. These academic

meetings convene scholars within and across disciplines of study. They are incubators for innovation and promote the free flow of information and ideas. By hosting these events, *amici* ensure that their participating scholars can encounter and collaborate with other scholars. The resulting collaborations are essential to addressing problems that are global in scope, such as geopolitical conflict, terrorism, and the spread of communicable diseases.

The Order threatens these efforts by prohibiting certain academics from traveling to the U.S., and by provoking a backlash from others who are not subject to the ban. Indeed, international universities have observed that the Order and its predecessor will impede collaborative partnerships with American universities.[22] And these effects are already being felt. The University of Pennsylvania had planned to invite three Iranian human rights activists to a conference in March 2017, but with the Order in effect, their participation would have been barred. Similarly, a faculty member at Dartmouth planning a conference for this fall has expressed concern that participants may not be able or willing to travel to the U.S., and one keynote speaker has wondered

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[22] Parr, *supra* (quoting the President of McMaster University, Canada, as stating "This is a misguided and harmful step that is unnecessarily disruptive for students, faculty members and other partners. . . . As an internationally engaged research intensive university, this abrupt change in policy has a chilling impact on individual scholars and their families, and on the important relationships we have carefully built over the years. Our collaborative partnerships allow us to forge important research and educational programs and activities, which are threatened by arbitrary measures such as the one announced last week.").

whether it "sends the wrong message" to attend a conference here at this time. Participants in a conference at the Harvard Center for Middle Eastern Studies voluntarily withdrew due to current U.S. immigration policies or perceptions thereof. The Sharmin & Bijan Mossavar-Rahmani Center for Iran and Persian Gulf Studies at Princeton expressly aims to advance understanding of Iran and the Persian Gulf; if the Center cannot invite Iranian guest speakers, the Center obviously will be impeded in serving its mission.

What is more, faculty members from around the world already have called for a boycott of academic conferences in the U.S. in response to the Order and its predecessor.[23] A petition circulated online has drawn thousands of signatures from scholars in the U.S. and abroad pledging not to attend international conferences here because of the Order.[24]

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[23] *See* Shannon Najmabadi, *Academics Mull Boycott of U.S. Conferences as a Way of Fighting Travel Ban*, The Chronicle of Higher Education (Jan. 30, 2017), http://www.chronicle.com/article/Academics-Mull-Boycott-of-US/239047?cid=pm&utm_source=pm&utm_medium=en&elqTrackId=e9a82fa115e24765bc019b2dfc9d480e&elq=ef21be06f46043e287aeedd6a611eb6e&elqaid=12357&elqat=1&elqCampaignId=5023; Elizabeth Redden, *Boycotting the U.S.*, Inside Higher Ed (Jan. 31, 2017), https://www.insidehighered.com/news/2017/01/31/protest-trump-entry-ban-some-scholars-areboycotting-us-based-conferences.

[24] In Solidarity with People Affected by the 'Muslim Ban,' https://docs.google.com/forms/d/e/1FAIpQLSeNN_2HHREt1h-dm_CgWpFHw8NDPGLCkOwB4lLRFtKFJqI25w/viewform?c=0&w=1&fbzx=2104368019732744200 (last visited Sept. 15, 2017).

Academic conferences and meetings facilitate major breakthroughs and discoveries, candid discussion and debate, and face-to-face meetings that generate future collaborations and partnerships. Excluding scholars from the six affected countries—and other scholars who choose not to participate because of the Order—will hamper the success of these collaborations. American universities, students, and faculty will inevitably suffer when these meetings are shifted abroad to avoid the Order's effects.

Fifth, as *amici* have explained, they strive to foster a culture of diversity, inclusion, and tolerance on their campuses. *Supra* Part I. The Order undercuts those important efforts by making many of *amici*'s students, faculty, and scholars feel "less than," and signaling, from the highest levels of government, that discrimination and religious intolerance is not only acceptable but appropriate. Rather than securing American universities, this thwarts *amici*'s ability to foster a diverse environment in which individuals feel comfortable contributing to a robust exchange of ideas.

Finally, limiting the scope of the Order to "foreign nations who lack any bona fide relationship with a person or entity in the United States," *International Refugee Assistance Project*, 137 S. Ct. at 2087, does not rectify the Order's harms to *amici*. Though this Court offered some examples of which relationships would qualify as "bona fide," regrettably these examples did not resolve the uncertainty the Order has introduced into potential collaborations between *amici* and international students, faculty, and scholars.

Students who have already been admitted to American universities, and workers who have already accepted offers of employment from American companies, are two examples of qualifying bona fide relationships. 137 S. Ct. at 2088. But what about international scholars at *amici* universities who are not students or employees of *amici* or any other American entity? The populations of such international scholars at *amici* are sizeable. For instance, over 50 scholars from the six targeted countries contribute to Harvard's academic departments as visiting researchers, research and postdoctoral fellows, and interns. None of these scholars is a student at Harvard, or an employee of Harvard on a sponsored work visa. To Harvard, their relationship is surely bona fide, but the University has no assurance that the U.S. will not conclude otherwise at the border. The discretion afforded the government under this rule has harsh consequences; for example, scholars and students may be loath to publish research or other works critical of the government, its political preferences, or U.S. foreign policy, lest their immigration status be threatened as a result. The ambiguity and uncertainty inherent in the "bona fide relationship" test could well have a destructive chilling effect on scholars and students who have traditionally enjoyed an environment of academic freedom in this country.

The "bona fide relationship" carve-out also fails to account for the substantial class of *prospective* international students, faculty, and scholars. The Court has not specified whether § 2(c) may be enforced against individuals who do not currently have, but may in the

near future enter into a relationship with an American entity. International students considering applying to *amici* in the 2017-2018 application cycle likely do not currently have a formal, documented relationship with any U.S. entity, and they will not unless and until they are accepted by an *amicus* university. So too for many international faculty and scholars not currently employed by *amici* universities, or any other American entity, whom *amici* universities may wish to recruit, interview, invite to lecture, or host for forthcoming conferences. Yet without the ability to visit campus and meet with potential colleagues or faculty, international students, faculty, and scholars are far less likely to select an American college or university. Even as modified by the stay, the Order thus places *amici* at a distinct disadvantage relative to international schools.

There are other problems with the Order as partially stayed. Although the Court made clear that "a lecturer invited to address an American audience" has a qualifying bona fide relationship with the inviting entity, 137 S. Ct. at 2088, it said nothing about a scholar who intends to attend an academic conference here. That scholar may informally participate in the conference by engaging with lecturers and other attendees, but he or she may not have been invited formally to do so. There is no telling whether that sort of relationship would qualify under the Court's test (or the government's interpretation thereof). These sorts of situations happen hundreds of times to thousands of scholars each year at American colleges and universities.

Because the "bona fide relationship" carve-out fails to account for the myriad ways in which *amici*

universities collaborate with international students, faculty, and scholars, it may impede the creation of *amici*'s future bona fide relationships. Worse still, this carve-out will not prevent the potential long-term attrition at *amici* of international students, faculty, and scholars from the countries affected by the Order—and from other countries as well. Even in its more limited form, the Order harms American colleges and universities and should be invalidated.

CONCLUSION

Amici take seriously the safety and security of their campuses and the nation: if *amici*'s campuses were not safe, or the towns and cities in which they are located were not secure, *amici* could not maintain their world-renowned learning environments. *Amici*, however, believe that safety and security concerns can be addressed in a manner that is consistent with the values America has always stood for, including the free flow of ideas across borders and the welcoming of foreign nationals to our campuses. The Order falls far short of justifying its ban on individuals from the specified countries. Given this, as well as the significant burdens the Order inflicts on *amici*'s current and potential students, faculty, and scholars and its substantial impediment to *amici*'s ability to fulfill their educational missions, *amici* respectfully urge the Court to affirm the decisions below.

September 18, 2017

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